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Comments on the Draft Criminal Justice (Northern Ireland) Order 1996

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The Draft Order, as it currently stands, generally represents an improvement and rationalisation of the criminal justice system. There are however a number of concerns that we, as a civil liberties organisation, have with the legislation as presently drafted.

Interpretation
Article 2(2)

The definition of "sexual offence" in the Draft Order is that provided by section 58(5) of the Children's and Young Persons Act (Northern Ireland) 1968. This definition includes offences ranging from those of a relatively minor nature to very serious sexual assaults. We believe that this definition needs to be reconsidered to place it on a more rational basis.

Article 2(7)

We believe that the connection between two offences in order to treat them as associated needs to be much stronger than simultaneous sentencing. We believe that the offences need to be a germane connection between two associated offences.

Restrictions on imposing custodial offences
Article 19

This section, when read in conjunction with article 2(8), raises the spectre of preventative detention and, we believe needs to be clarified for the benefit of the courts and defendants. As presently framed, 19(2)(b) allows the imposition of a custodial sentence on an offender convicted of a violent or sexual offence when "only such a sentence would be adequate to protect the public from serious harm." However 2(8) states that the phrase protecting the public from serious harm means protecting them from harm "occasioned by further such offences committed by him." If preventative detention is what the drafters had in mind, it is an unacceptable and is clearly in contravention of the European Convention of Human Rights.

Release on license of certain prisoners
Article 29

Broadly speaking, we do not have serious difficulties with the notion of continued supervision of convicted sexual offenders following their release from custody. We understand the need to protect the public from serious harm. However, we are concerned that Article 29 allows the Secretary of State to revoke the licence of a prisoner if he or she feels that "it is expedient in the public interest to do so." We believe that this criterion is significantly broader than is necessary. We would suggest that it should be replaced by a narrower formulation which would allow the licence to be revoked if there is "a manifest risk of serious harm to the public."

We welcome the mechanisms in Article 29 which afford the offender the right to challenge the decision of the Secretary of State but we feel that the offender should be given the reasons for the Secretary of State's decision in writing. We presume that the final decision of the Secretary of State will also be subject to judicial review.

Miscellaneous
Article 37

While we understand the need to smooth administrative difficulties caused by the large number of remands in Belfast in particular, we do not feel that the removal of the right of the accused to insist on weekly remands is the appropriate panacea for this problem. Despite the safeguards in the Article, we believe that inevitably the practise of remanding for regular intervals of 28 days will develop, thus reducing pressure on the prosecution to expedite the matter, and thereby increasing administrative difficulties.

Corroboration
Article 47

We regard this and the following article to be the most invidious in the Draft Order. It is remarkable in the light of the serious miscarriage of justice cases that have plagued the British judicial system in the recent past that a common feature of proposed legislation in the criminal justice sphere is the constant erosion of those safeguards that do exist. Uncorroborated evidence, particularly from an accomplice, carries with it a clear risk and it is imperative that a jury should be warned of that risk. The risk is unfortunately known all too well to all of those concerned with the protection of civil liberties in Northern Ireland. The alienation from the administration of justice
system caused by the use of the uncorroborated accomplice evidence in what became known as the supergrass system has still not been assuaged. Loss of faith in the justice system in Northern Ireland was not the only casualty of the use of this evidence: the Northern Ireland judiciary was seen internationally as failing in its duty to protect the integrity of the justice system and was subject to widespread international criticism. The use of the system clearly violated the fair trial provisions of the International Covenant on Civil and Political Rights and the European Convention of Human Rights. The eventual collapse of the system resulted largely from a belated recognition by the courts of the dangers of uncorroborated accomplice evidence. We regard it as astonishing that government is contemplating a return to the use of such evidence.

We believe that similar concerns apply in relation to the use of uncorroborated complainant evidence in a case involving a sexual offence. If there are specific characteristics that distinguish such cases, we would be grateful to receive an account of them.

Article 48
Similar concerns exercise in relation to this article as in relation to Article 47. We again regard the removal of this safeguard as dangerous to the rights of the individual. The uncorroborated evidence of an accomplished liar could conceivably convict someone of a serious criminal offence in light of this amendment.

Intimidation, etc., of witnesses, jurors and others
Article 49

The alleged intimidation of jurors, witnesses and others is of course a serious matter and we notice it has appeared to exercise the minds of government in the recent past. However we do not believe it is appropriate to introduce new criminal offences in the absence of empirical evidence that a serious problem exists. We submit that it is important that if such evidence exists, it should be presented. We do not object to the criminalisation of this behaviour but we are concerned at the presumption of intention in the absence of evidence. We do not believe that diluting the normal criminal standard of proof will help to resolve this problem, if indeed it is a significant phenomena, and we are concerned that it represents yet another example of the erosion of the rights of those being processed by the criminal justice system.